

this paragraph, he or she shall be advised of the procedures for applying for a waiver of grounds of inadmissibility on Form I-601 (Application for waiver of grounds of excludability).

(c) *Grounds of inadmissibility that may not be waived.* The Service may not waive the following provisions of section 212(a) of the Act:

(1) Paragraphs (2)(A)(i), (2)(B), and (2)(C) (relating to criminals and drug offenses);

(2) Paragraphs (3)(A), (3)(B), (3)(C), and (3)(D) (relating to national security); or

(3) Paragraph (3)(E) (relating to those who assisted in the Nazi persecution).

[56 FR 619, Jan. 7, 1991, as amended at 58 FR 58937, Nov. 5, 1993. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997]

#### § 244.4 Ineligible aliens.

An alien is ineligible for Temporary Protected Status if the alien:

(a) Has been convicted of any felony or two or more misdemeanors, as defined in § 240.1, committed in the United States, or

(b) Is an alien described in section 243(h)(2) of the Act.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997]

#### § 244.5 Temporary treatment benefits for eligible aliens.

(a) *Prior to the registration period.* Prior to the registration period established by the Attorney General, a national of a state designated by the Attorney General shall be afforded temporary treatment benefits upon the filing, after the effective date of such designation, of a completed application for Temporary Protected Status which establishes the alien's *prima facie* eligibility for benefits under section 244A of the Act. This application may be filed without fee. Temporary treatment benefits, if granted, shall terminate unless the registration fee is paid or a waiver is sought within the first thirty days of the registration period designated by the Attorney General. If the registration fee is paid or a waiver is sought within such thirty day period, temporary treatment benefits shall continue until terminated under § 240.13. The denial of temporary treatment

benefits prior to the registration period designated by the Attorney General shall be without prejudice to the filing of an application for Temporary Protected Status during such registration period.

(b) *During the registration period.* Upon the filing of an application for Temporary Protected Status, the alien shall be afforded temporary treatment benefits, if the application establishes the alien's *prima facie* eligibility for Temporary Protected Status. Such temporary treatment benefits shall continue until terminated under § 240.13.

(c) *Denied benefits.* There shall be no appeal from the denial of temporary treatment benefits.

[56 FR 619, May 22, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997]

#### § 244.6 Application.

An application for Temporary Protected Status shall be made in accordance with § 103.2 of this chapter except as provided herein. Each application must be filed with the fee as provided in § 103.7 of this chapter, by each individual seeking Temporary Protected Status, except that the fee for Form I-765 will be charged only for those aliens who are nationals of El Salvador, and are between the ages of 14 and 65 (inclusive), and are requesting work authorization. Each application must consist of a completed Application for Temporary Protected Status (Form I-821), Application for Employment Authorization (Form I-765), two completed fingerprint cards (Form FD-258) for every applicant who is fourteen years of age or older, two identification photographs (1½"×1½"), and supporting evidence as provided in § 240.9.

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#### § 244.7 Filing the application.

(a) An application for Temporary Protected Status shall be filed with the district director having jurisdiction over the applicant's place of residence.

(b) An application for Temporary Protected Status must be filed during the registration period established by

the Attorney General, except in the case of an alien described in § 240.2(f)(2).

(c) Each applicant must pay a fee, as determined at the time of the designation of the foreign state, except as provided in § 240.5(a).

(d) If the alien has a pending deportation or exclusion proceeding before the immigration judge or Board of Immigration Appeals at the time a state is designated under section 244A(b) of the Act, the alien shall be given written notice concerning Temporary Protected Status. Such alien shall have the opportunity to submit an application for Temporary Protected Status to the district director under § 240.7(a) during the published registration period unless the basis of the charging document, if established, would render the alien ineligible for Temporary Protected Status under § 240.3(c) or 240.4. Eligibility for Temporary Protected Status in the latter instance shall be decided by the Executive Office for Immigration Review during such proceedings.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991; 58 FR 58937, Nov. 5, 1993. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997]

#### § 244.8 Appearance.

The applicant may be required to appear in person before an immigration officer. The applicant may be required to present documentary evidence to establish his or her eligibility. The applicant may have a representative as defined in § 292.1 of this chapter present during any examination. Such representative shall not directly participate in the examination; however, such representative may consult with and provide advice to the applicant. The record of examination shall consist of the application, documents relating to the application, and the decision of the district director.

[56 FR 619, Jan. 7, 1991, as amended at 56 FR 23497, May 22, 1991. Redesignated at 62 FR 10367, 10382, Mar. 6, 1997]

#### § 244.9 Evidence.

(a) *Documentation.* Applicants shall submit all documentation as required in the instructions or requested by the Service. The Service may require proof of unsuccessful efforts to obtain docu-

ments claimed to be unavailable. If any required document is unavailable, an affidavit or other credible evidence may be submitted.

(1) *Evidence of identity and nationality.* Each application must be accompanied by evidence of the applicant's identity and nationality, if available. If these documents are unavailable, the applicant shall file an affidavit showing proof of unsuccessful efforts to obtain such identity documents, explaining why the consular process is unavailable, and affirming that he or she is a national of the designated state. A personal interview before an immigration officer shall be required for each applicant who fails to provide documentary proof of identity or nationality. During this interview, the applicant may present any secondary evidence that he or she feels would be helpful in showing nationality. Acceptable evidence in descending order of preference may consist of:

- (i) Passport;
- (ii) Birth certificate accompanied by photo identification; and/or
- (iii) Any national identity document from the alien's country of origin bearing photo and/or fingerprint.

(2) *Proof of residence.* Evidence to establish proof of continuous residence in the United States during the requisite period of time may consist of any of the following:

(i) Employment records, which may consist of pay stubs, W-2 Forms, certification of the filing of Federal, State, or local income tax returns; letters from employer(s) or, if the applicant has been self employed, letters from banks, and other firms with whom he or she has done business. In all of the above, the name of the alien and the name of the employer or other interested organization must appear on the form or letter, as well as relevant dates. Letters from employers must be in affidavit form, and shall be signed and attested to by the employer under penalty of perjury. Such letters from employers must include:

- (A) Alien's address(es) at the time of employment;
- (B) Exact period(s) of employment;
- (C) Period(s) of layoff; and
- (D) Duties with the company.